U.S. Department of Justice
Executive Office for United States Attorneys

United States Attorneys' Bulletin

Published by:

Executive Office for United States Attorneys, Washington, D.C.
For the use of all U.S. Department of Justice Attorneys

VOL. 30 MAY 14, 1982 NO. 9

VOL. 30 MAY 14, 1982 NO. 9

TABLE OF CONTENTS

COMMENDATIONS

Assistant United States Attorney ELIZABETH JUCIUS, District of Arizona, has been commended by Mr. Ernest Gustafson, Acting District Director, Immigration & Naturalization Service in Phoenix, Arizona, for her significant and noteworthy efforts in the case of Francisco Sanchez-Martinez v. INS dealing with a convicted alien smuggler.

Assistant United States Attorney JOHN D. LYONS, District of Arizona, has been commended by L. O. Poindexter, Postal Inspector in Charge, United States Postal Service in Los Angeles, California, for his recent success in the mail fraud trial of United States v. Harold S. McClintock and Nicholas M. Ladomato/DeBeers Diamond Investment, Ltd., which dealt with a very complex diamond investment fraud scheme.

Assistant United States Attorney JAMES MUELLER, District of Arizona, has been commended by Mr. Oliver Thurman, Acting Regional Administrator, General Services Administration in San Francisco, California, for his fine work in the complex discrimination case of Taylor v. Freeman.

Assistant United States Attorney BARBARA SCHWARTZ, Southern District of Florida, has been commended by Mr. Joseph V. Corless, Special Agent in Charge, Federal Bureau of Investigation in Miami, Florida, for the successful prosecution of Jerry Mack Denson, convicted of bank robbery in the case of United States v. Denson.

Assistant United States Attorneys WILLIAM TURNOFF and NEIL TAYLOR, Southern District of Florida, have been commended by Mr. Charles F. Howell, Special Agent in Charge, U.S. Secret Service in Miami, Florida, for "outstanding performance in support of law enforcement" for their successful prosecution in the case of United States v. Raymond Koon dealing with charges of conspiracy to violate civil rights and obstruction of justice resulting from the murder of a witness in a counterfeiting trial against Koon.

VOL. 30 MAY 14, 1982 NO. 9

EXECUTIVE OFFICE FOR U. S. ATTORNEYS
William P. Tyson, Director

POINTS TO REMEMBER

Draft Representation Letter Agreement

In accordance with the revised statement of policy guidelines recently signed by the Attorney General, published at 28 C.F.R. Part 50 and reprinted in 30 U.S.A.B. No. 6 (March 19, 1982), the following copy of a Draft Representation Letter Agreement is requested to be utilized by all United States Attorneys in the process of establishing representation of individual federal employees.

(Executive Office)

DRAFT REPRESENTATION LETTER AGREEMENT

Re:

Dear:

This is in response to your request for representation by the Department of Justice in this case. It reasonably appears that you were acting within the scope of your federal employment with respect to the events giving rise to this lawsuit and that extending such representation would be in the interest of the United States. Therefore, I am pleased to advise you that representation in this case by attorneys employed by the Department of Justice is available to you without cost.

You are, of course, free to retain private counsel at your own expense to represent your interests in this case now and at any time in the future. You are not required to accept representation by Department of Justice attorneys and it is the purpose of this letter to provide you with information about the nature of Department of Justice representation so that you can make an informed choice. A copy of the applicable regulations is attached for your information and review.

Department of Justice representation may differ in certain respects from that provided by a private attorney hired by you with your own funds because the Department attorney must continue to represent the interests of the United States. This is not to say that the attorney(s) assigned to your defense will not engage in a full, confidential and traditional attorney-client relationship with you. The attached regulations and legal ethics require attorneys assigned to this case to keep your confidences. But you must also be made aware of the fact that the responsibility of Department attorneys to represent the interests of the United States may, at times and under certain circumstances, limit actions which might otherwise be taken on your behalf. For these reasons, you should be aware of the following points concerning the representation by Justice Department lawyers which we are offering you:

1. Attorneys employed by the Department will not assert on your behalf any claim you may have against the United States in this case; nor will they assert any claim you might have against other federal employees;

2. As a general policy, Department attorneys can only undertake to defend you. They will not assert an affirmative claim on your behalf against the plaintiff or anyone else. If you strongly believe that such a claim should be asserted, your normal recourse would be for you to hire a private attorney at your personal expense to press that claim. In the rare instance when an affirmative claim would also further the defense of the federal employee and the interests of the United States, the Department would consider pressing the claim;

3. If there is a legal argument which may be made in your defense, but which conflicts with a legal position taken by the United States in this or another case, Department of Justice attorneys will not make the argument. You will be advised of this fact and afforded the opportunity to retain private counsel at your expense if you choose to pursue the argument. It must be noted that, within these constraints, Department attorneys will fully represent you and will assert all legal positions appropriate to your defense which are not precluded by their responsibility to attend to the interests of the United States;

4. If the United States, any agency or any officer in his official capacity is also sued, Department attorneys are required to assert all appropriate defenses on their behalf even if it is to your detriment in defending the case;

5. If the judgment of the court is in your favor and the losing plaintiff appeals, representation would continue throughout the appellate stages of this case. In the event of an adverse judgment, the Solicitor General would determine whether an appeal would be in the interest of the United States. If so, Department attorneys would continue to represent you. If the Solicitor General, pursuant to the statutory obligations inherent in his office, determines that an appeal would not be in the interest of the United States, we would make every effort to facilitate an appeal by an attorney retained by you at your own expense if you desire.

While in some narrowly limited circumstances the Department of Justice may elect to provide private counsel at federal expense, the chronic uncertainty of budgetary limitations and the required determinations as to the interests of the United States may preclude such representation at any given time. In any event, the circumstances of this case at the present time permit direct representation by Department of Justice attorneys.

In the event of an adverse money judgment entered solely against you in this case, you will be personally responsible for the payment of this judgment; there is no right to indemnification from the United States. However, if the United States is properly made a defendant by the plaintiff and there is a judgment

entered jointly against you and the United States, the United States would pay the judgment. By statute, the United States cannot be held liable for punitive damages (damages awarded to punish the defendant). Therefore, you would be personally responsible in the unlikely event punitive damages are assessed.

We look forward to a close and productive working relationship with you on this case should you elect to be represented by Department of Justice attorneys. If so, please sign the attached copy of this letter and return it for our files. Our office is committed to vigorously defending this action and we share your confident hope in a favorable result.

ACKNOWLEDGEMENT
AND ACCEPTANCE: _____

DATE: _____

Memorandum

215

Full-Field Investigation in Litigation

Subject	Date
Full-Field Investigation in Litigation	APR 22 1982

To

Richard Kidwell
Security Programs Manager
Executive Office for
U.S. Attorneys

From

D. Jerry Rubino, Director
Security Staff
Justice Management Division

The Security Staff (SS), Justice Management Division has become increasingly involved with granting security access clearances for Executive Branch National Security Information to defense counsel, court reporters, and law clerks involved in litigation. Under current Department of Justice (DOJ) policy, any person outside the Executive Branch who requires access to classified information originated by or in the custody of the DOJ, must be the subject of a completed and current full-field background investigation before a determination of eligibility for security clearance can be made by the SS. Generally, the full-field investigation is conducted by the Federal Bureau of Investigation (FBI)

The FBI has indicated to this staff that the length of time it takes to complete a full-field investigation is 90 days. The FBI has also indicated that recently, requests for full-field investigations for individuals outside the Executive Branch have been made with unrealistic suspense dates (usually one to two weeks or less).

While it is recognized that often these unrealistic time limits are imposed by the courts, I feel that it may be helpful if the courts were informed, through the U.S. Attorney's Office at the time of litigation, of the amount of time normally required to conduct a full-field investigation. Therefore, I am requesting that this information be distributed to all U.S. Attorneys. Should you have any questions, please call Charles Alliman on 633-2351.

Racketeer Influenced and Corrupt Organizations (RICO)

Part II of the RICO Guidelines states, in part, that no criminal or civil RICO (18 U.S.C. 1961, et seq.) litigation may be commenced without the prior approval of the Criminal Division (Organized Crime and Racketeering Section). (See United States Attorneys' Manual bluesheet dated January 30, 1981, affecting USAM 9-110.100). Such prior approval is required for the filing of a criminal information or indictment under RICO even when the defendant has agreed to plead guilty and for the filing of a civil RICO complaint, judgment or decree even when the defendant is willing to consent to such filing.

(Criminal Division)

Mailing Address for the Office of Enforcement Operations, Criminal Division

Please insure that all necessary mailing lists and records reflect that the proper mailing address for the Office of Enforcement Operations, Criminal Division, is:

P. O. Box 7600
Ben Franklin Station
Washington, D.C. 20044-7600

See United States Attorneys' Manual 9-21.400 for related information.

(Criminal Division)

EXECUTIVE OFFICE STAFF - MAY, 1982

The following Executive Office rosters reflect a number of recent personnel changes. Copies of the rosters should be made available to all persons in the U. S. Attorneys' offices who deal directly with Executive Office personnel.

DIRECTOR - William P. (Bill) Tyson 633-2121

Secretary to the Director - Carolyn D. Poindexter 2121

Executive Assistant - Rosemarie A. Covaleski 4183
Executive Assistant - Martha J. Dalby (Part-time) 4183
(Reports; U.S. Attorneys' Conferences; Financial Disclosure Reports; sensitive personnel matters; special assignments; Appointment process for new U.S. Attorneys)

Administrative Assistant - Joyce T. Wood 4183
(Administrative Aide to the Attorney General's Advisory Committee of United States Attorneys; Black Affairs Program Manager; general support to Executive Assistant

ACTING DEPUTY DIRECTOR - Laurence S. (Larry) McWhorter 2123

Secretary to the Acting Deputy Director - Lynn R. Winters 2123

Special Assistant to the Acting Deputy Director - John Beal 3276
(Department Speedy Trial Coordinator)

Secretary to the Special Assistant - Helen D. Jones 3276
(Clerical support for Speedy Trial Coordination Unit)

Senior Staff Assistant for Attorney Hiring - D. Glen Stafford 2074
(Pre-employment processing of Assistant U.S. Attorney applicants; Special Assistant U.S. Attorneys; Law Clerk-AUSA conversions; Employment Review Committee Staff; status of attorney appointments)

Equal Employment Opportunity Office
Universal North Bldg., 1875 Conn. Ave., NW, Rm. 1035

Equal Employment Opportunity Officer - Frances H. Cuffie 673-6333
(General Policy Development)

EEO Specialist - Laverne A. Parks 6333
(EEO Complaint processing)

EEO Specialist - H. Daryl Thomas 6333
(National Selective Placement, Black Affairs, and American Indian Programs)

EEO Specialist - Yvonne J. Makell 6333
(National Federal Women's, Hispanic, and Asian Pacific Programs)

EEO Assistant - Vacant 6333
(Administrative support for EEO Unit)

OFFICE OF LEGAL EDUCATION

DIRECTOR - Richard E. (Dick) Carter 633-1621
(Training courses; Department attorney training coordinator)

Secretary to the Director - Judith C. Campbell 1621
(Clerical support and assistant to the Director; OLE correspondence coordinator)

Staff Assistant - Robert (Bob) Matthews 1621
(OLE administrative coordination, budget, conference arrangements; cassette lending library)

Clerk-Typist - Sandra (Sandy) Coleman 4837
(Request for training; Continuing Legal Education and logistical support)

Staff Assistant - Doris F. Johnson 4837
(Fiscal Operations; requests for training)

DIRECTOR, ATTORNEY GENERAL'S ADVOCACY INSTITUTE - Vacant 4104

Assistant Director, AGAI (Civil) - E. Leslie (Pete) Hoffman, III 4104
(Institute training courses)

Paralegal - Vickie Woodey 4104
(Research assistant for Civil training courses; specialized seminars)

Clerk-Typist - Nannie B. Nixon 4104
(Clerical support and coordination for Civil training courses, special seminars)

Assistant Director, AGAI (Criminal) - Charles Lewis 4104
(Institute training courses)

Paralegal - Mary Hammond 4104
(Research assistant for Criminal training courses and specialized seminars)

Clerk-Typist - Anna Sims 4104
(Clerical support and coordination of all Criminal training courses, special seminars)

Assistant Director, AGAI (Appellate) - Mary Reed 4104
(Institute training courses)

Paralegal - Donna Corbin 4104
(Research assistant for Appellate training courses and specialized seminars)

Clerk-Typist - Dianna Ingram 4104
(Clerical support and coordination of all Appellate training courses, special seminars)

DIRECTOR, LEGAL EDUCATION INSTITUTE - Karen Sherman 673-6372
Universal North Bldg., 1875 Conn. Ave., NW, Rm. 1034

Assistant Director, Legal Education Institute - G. Michael Lennon 6372
Assistant Director, Legal Education Institute - Albert Kemp 6372
Assistant Director, Legal Education Institute - Susan L. Moss 6372
(Institute training courses)

Paralegal - Pamela Maida 6372
(Research assistant for LEI training courses and specialized seminars)

Paralegal - Daire McCabe 6372
(Research assistant for LEI training courses and specialized seminars)

Clerk-Typist - Josephine Y. (Yvonne) Jones 6372
(Inquiries and correspondence; general clerical support)

Clerk-Typist - Drema Hanshaw 6372
(Inquiries and correspondence; general clerical support)

OFFICE OF INFORMATION SYSTEMS AND SUPPORT
Universal North Bldg., 1875 Conn. Ave., NW, Rm. 1035

DIRECTOR - C. Madison Brewer 6379
(Promis, management support and information systems)

ASSISTANT DIRECTOR (ACTING) - Jack Rugh 6379
(Management support and information systems)

Secretary to the Assistant Director - Sharon L. White 6379
(Clerical support for Management Services and Information Systems)

Management Analyst - L. Carol Sloan 6379
(Word processing - studies of operations, review of requests, writing procedure manuals and training; semi-automated case management pilot project)

Staff Assistant - Barbara Sonneman 6379
(Word processing equipment procurement and management)

Management Analyst - Patrick C. (Pat) McAloon 6379
(Office procedures and practices; use of resources; training; Selective Placement Program Manager)

Management Analyst - Linda J. Fleming 6379
(Office procedures)

Systems Analyst - Joseph Creamer 6379
(Computer Systems design and audit, PROMIS)

Computer Specialist - Jack Rugh 673-6379
(Legal Systems)

Secretary to the Computer Staff - Paula Anderson 6379

Automated Litigation Support Specialist - Klaus Liephold 798-6165
(Litigation management systems - Los Angeles)

FIELD ACTIVITIES
Skyline Building One, Suite 803

ASSISTANT DIRECTOR - Ernest R. (Ernie) Bengtson 756-6287
Attorney - Donald (Don) Burkhalter 6287
(On-site consultation and assistance to U.S. Attorneys on all aspects of operations; special conferences on problem areas of litigation; Departmental program review)

Secretary to the Assistant Director - Betty K. (Kathy) Mann 6287
(Clerical support to Field Activities)

COLLECTIONS:
Skyline Building One, Suite 803

ASSISTANT DIRECTOR - Edward H. (Ed) Funston 6287
Management Analyst - Thomas A. (Thom) Zinser 6287
(On-site evaluation and review of collections operations of U. S. Attorneys' offices; training of collections personnel; Department debt collection program review)

Secretary to the Assistant Director - Linda D. Weller 6287
(Clerical support to Collections Section)

LEGAL SERVICES

ACTING ASSISTANT DIRECTOR - Susan A. (Sue) Nellor 633-4024
(Supervision of all legal services, United States Attorneys' Bulletin, United States Attorneys' Manual, JURIS services)

Secretary to the Assistant Director - Nancy Smith 4024

Attorney - Susan A. (Sue) Nellor 4024
(Freedom of Information and Privacy Acts; EEO legal matters, allegations of misconduct/AUSAs; Ethics in Government Act; legislative inquires; general legal services)

Attorney - Frank R. Newett 4024
(Freedom of Information and Privacy Acts; Ethics in Government Act; general legal services)

Attorney-Advisor - Vacant 4024
(Freedom of Information and Privacy Acts; Legislative inquiries; Ethics in Government Act; general legal services)

Paralegal - Cynthia J. Robinson 633-4024
(Freedom of Information Act files control; quarterly reports)

Paralegal - Daria Zane 4024
(General legal services)

Clerk-Typist - Alice B. Evans 4024
(Freedom of Information Act files; clerical support for legal services)

Clerk-Typist - Vacant 4024
(Freedom of Information Act files, clerical support for legal services)

Universal North Bldg., 1875 Conn. Ave., NW, Room 1031

Paralegal - Nancy Armstrong 673-6348
(Editor-United States Attorneys' Bulletin and United States Attorneys' Manual)

Clerk-Typist - June I. Maynard 6348
(Clerical support for Bulletin and Manual)

Clerk-Typist - Sharon M. Geiglein 6348
(Clerical support for Manual)

Clerk-Typist - Tonoa Purifoy 6348
(Clerical support for Bulletin and Manual)

ADMINISTRATIVE SERVICES

ASSISTANT DIRECTOR - Francis X. (Frank) Mallgrave 633-3982
(Administrative activities)

Secretary to the Assistant Director - Judith A. (Judy) Beeman 3982
(Clerical support for Administrative Services)

Space Management Officer - Richard L. (Dick) Kidwell 4663
(Space assignment, alterations, use; building services; telephone service; physical security; safety and accident reports; health unit participation)

Support Services Manager - Virginia L. (Gini) Trotti 4663
(Office furnishings, equipment (purchase and rental); libraries; printing; cleaning, repair services; records disposal; shipment (governmental bills of lading); consultation on office moves)

Clerk-Typist - Helen L. Brooks 4663
(Clerical support for Procurement)

Clerk-Typist - Cynthia J. Brock (Clerical support for Space Management)	633-4663
Financial Manager - Edward A. (Ed) Moyer (Budget; overtime and travel allotments; litigation expenses)	3982
Staff Assistant - Gerri Rodkey (Foreign travel; relocation; temporary support positions; general clerical support)	3982
Clerk-Typist - Audrey Weaver (Clerical support for Administrative Services	3982
Budget Analyst - M. Joanne Beckwith (Management of financial obligations (FMIS); financial reports; certifying officers)	4663
Clerk-Typist - Debra A. Sayles (Key operator for FMIS)	4663
Personnel Officer - Daniel W. (Dan) Gluck (General supervision of personnel activities)	2080
Operations Unit - Team #1	
Team Leader - Sally S. Ruble	4663
Personnel Clerk - Marquetta J. (Ketta) Quarles (Personnel Actions in Category I)	4663
Personnel Specialist - Mary L. Fox	4663
Personnel Assistant - J. Ann Hackley (Personnel Actions in Category III)	4663
Personnel Specialist - Henry W. Zecher	4663
Personnel Clerk - Patricia L. (Pat) Holland (Personnel Actions in Category IV)	4663
Operations Unit - Team #2	
Team Leader - Melinda P. Bell	4459
Personnel Assistant - Scarlitt A. Proctor (Personnel Actions in Category II)	4459
Personnel Specialist - Anthony C. (Tony) Jenkins	4459
Personnel Clerk - Tony Ashton (Personnel Actions in Category VI)	4459
Personnel Specialist - Vacant	4459
Personnel Clerk - Debi Cleary (Personnel Actions in Category V)	4459

Personnel Program Unit

Supervisory Personnel Specialist - Connie M. Herrmann (General policy development)	633-2080
Personnel Management Specialist - Gloria J. Harbin (Suggestions program; savings bond campaign; request for security clearances; Attorney General's Awards Ceremony; restoration of annual leave; open season for health benefits)	2080
Personnel Management Specialist - Gary Wagoner (Paralegal training; Upward Mobiliity Program; student employment programs; American Indian and Asian/Pacific Program Manager; student employment)	2080
Clerk-Typist - Jane Clancy (Request for training; appointment certificates; clerical support for Programs Unit)	2080

PERSONNEL SPECIALISTS' ASSIGNED DISTRICTS

DISTRICT	I	II	DISTRICT	I	II
01 Ala. N.			44 Mo. E.		
02 M.			45 W.		
03 S.			46 Mont.		
04 Alaska			47 Nebr.		
05 Arizona			48 Nev.		
06 Ark. E.			49 N. H.	✓	
10 W.			50 N. J.		
11 Cal. N.			51 N. Mex.		
12 C.			52 N. Y. N.	✓	
96 S.			53 E.	✓	
97 E.			54 S.	✓	
92 C. Z.			55 W.	✓	
13 Colo.			56 N. C. E.		
14 Conn.	✓		57 M.		
15 Del.	✓		58 W.		
16 D. C.		✓	59 N. Dak.		
17 Fla. N.			60 Ohio N.		✓
18 M.			61 S.		✓
04 S.			62 Okla. N.		
19 Ga. N.			63 E.		
20 M.			64 W.		
21 S.			65 Oregon		
93 Guam			66 Pa. E.	✓	
22 Hawaii			67 M.	✓	
23 Idaho			68 W.	✓	
24 Ill. N.			69 P. Rico		
25 S.			70 R. I.	✓	
26 C.			71 S. C.		
27 Ind. N.		✓	73 S. Dak.		
28 S.		✓	74 Tenn. E.		
29 Iowa N.			75 M.		
30 S.			76 W.		
31 Kansas			77 Texas N.		
32 Ky. E.		✓	78 E.		
33 W.		✓	79 S.		
34 La. E.			80 W.		
95 M.			81 Utah		
35 W.			82 Vermont	✓	
36 Maine	✓		83 Va. E.		✓
37 Md.		✓	84 W.		✓
38 Mass.	✓		94 V. I.		
39 Mich. E.			85 Wash. E.		
40 W.			86 W.		
41 Minn.			87 W. Va. N.		✓
42 Miss. N.			88 S.		✓
43 S.			89 Wisc. E.		
			90 W.		
00 EOUSA		✓	91 Wyoming		

I Sally - Ketta
II Melinda - Scarlitt

DISTRICT	III	IV	DISTRICT	III	IV
01 Ala. W.	✓		44 Mo. E.		
02 M.	✓		45 W.		
03 S.	✓		46 Mont.		✓
04 Alaska		✓	47 Nebr.		
05 Arizona			48 Nev.		
06 Ark. E.			49 N. H.		
07 W.			50 N. J.		
08 Cal. N.			51 N. Mex.		
09 C.			52 N. Y. W.		
10 S.			53 E.		
11 E.			54 S.		
12 C. Z.			55 W.		
13 Colo.		✓	56 N. C. E.	✓	
14 Conn.			57 M.	✓	
15 Del.			58 W.	✓	
16 D. C.			59 N. Dak.		✓
17 Fla. N.	✓		60 Ohio N.		
18 M.	✓		61 S.		
19 S.	✓		62 Okla. N.		
20 Ga. N.	✓		63 E.		
21 M.	✓		64 W.		
22 S.	✓		65 Oregon		✓
23 Guam			66 Pa. E.		
24 Hawaii			67 M.		
25 Idaho		✓	68 W.		
26 Ill. N.		✓	69 P. Rico		
27 C.		✓	70 R. I.		
28 Ind. N.			71 S. C.	✓	
29 S.			72 S. Dak.		✓
30 Iowa N.			73 Tenn. E.	✓	
31 S.			74 M.	✓	
32 Kansas			75 W.	✓	
33 Ky. E.			76 Texas N.		
34 W.	.		77 E.		
35 La. E.	✓		78 S.		
36 M.	✓		79 W.		
37 W.	✓		80 Utah	.	
38 Maine			81 Vermont		
39 Md.			82 Va. E.		
40 Mass.	.		83 W.		
41 Mich. E.		✓	84 W. Va.		.
42 W.		✓	85 Wash. E.	.	✓
43 Minn.		✓	86 W.		✓
44 Miss. N.	✓		87 Wis. E.		
45 S.	✓		88 W.		✓
			89		✓
			90		✓
			91 Wyoming		✓

III Mary - Ann
IV Henry - Pat

DISTRICT	V	VI	DISTRICT	V	VI
01 AL, ND			46 MT		
02 AL, MD			47 NE		T
03 AL, SD			48 NV		H
06 AK			49 NH		
08 AZ	T		50 NJ	S	
09 AR, ED		T	51 NM	T	
10 AR, WD		T	52 NY, ND		
11 CA, ND	S		53 NY, ED		
12 CA, CD	S		54 NY, SD		
97 CA, ED	H		55 NY, WD		
98 CA, SD	H		56 NC, ED		
92 CZ			57 NC, MD		
13 CO			58 NC, WD		
14 CT			59 ND		
15 DE			60 OH, ND		
16 DC			61 OH, SD		
17 FL, ND			62 OK, ND		T
18 FL, MD			63 OK, ED		T
19 FL, SD			64 OK, WD		T
20 GA, ND			65 OR		
21 GA, MA			66 PA, ED		
22 GA, SD			67 PA, MD		
93 Guam			68 PA, WD		
23 HI			70 PR	M	
24 ID			71 RI		
25 IL, ND			72 SC		
26 IL, SD			73 SD		
27 IL ,CD			74 TN, ED		
28 IN, ND			75 TN, MD		
29 IN, SD			76 TN, WD		
30 IO, ND		T	77 TX, ND	T	
31 IO, SD		T	78 TX, ED	T	
32 KS		T	79 TX, SD	T	
33 KY, ED			80 TX, WD	T	
34 KY, WD			81 UT		H
35 LA, ED			82 VT		
95 LA, MD			94 VI	M	
36 LA, WD			83 VA, ED		
37 ME			84 VA, WD		
38 MD			85 WA, ED		
39 MA			86 WA, D		
40 MI, ED			87 WV, ND		
41 MI, WD			88 WV, SD		
42 MN			89 WI, ED		
43 MS, ND			90 WI, WD		
44 MS, SD			91 WY		
45 MO, ED		T	EOUSA		
46 MO ,WD		T			

V Debi
VI Tony Ashton

The Personnel Clerk works with several Personnel Specialists According to the following code:

S - Sally Ruble
H - Henry Zecher
M - Mary Fox
T - Tony Jenkins

VOL. 30 MAY 14, 1982 NO. 9

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

Weinberger v. Rossi, No. 80-1924, Supreme Court (March 31, 1982). D.J. #35-16-1285.

INTERNATIONAL LAW: SUPREME COURT UNANIMOUSLY CONCLUDES THAT THE TERM "TREATY" IS NOT NECESSARILY LIMITED TO INTERNATIONAL AGREEMENT CONCLUDED BY THE PRESIDENT WITH THE ADVICE AND CONSENT OF TWO-THIRDS OF THE SENATE.

In 1971 Congress passed a statute prohibiting discrimination against U.S. citizens in employment at American overseas military bases unless such discrimination is permitted by treaty. Pub. L. No. 92-129, §106, 5 U.S.C. 7201 note.

In 1978, respondents Rossi and several other U.S. citizens, employees at the naval facility at Subic Bay in the Philippines, were notified that their jobs were to be converted to local national positions in accordance with the Base Labor Agreement of 1968 between the United States and the Government of the Philippines. The BLA provides for preferential hiring of Filipinos at U.S. military facilities in the Philippines. The BLA supplemented the Military Base Agreement of 1947 between the U.S. and the Philippines. Neither the MBA nor the BLA is a treaty in the constitutional sense of that word.

Rossi challenged the conversion of his position as being in violation of section 106 of Pub. L. No. 92-129. The district court held that the BLA must be included in the term "treaty" as it is used in §106 because Congress could not have intended to undo the BLA and some dozen other executive agreements concerning various kinds of employment preferences for local nationals. The D.C. Circuit reversed and held that Congress clearly did intend to abrogate all such existing agreements despite the fact that it made no reference to the agreements in the legislative history. The Supreme Court has unanimously reversed the D.C. Circuit. The Court recognized that Congress has not always been consistent in its use of the term "treaty" in legislation, and that "treaty" in its international law sense includes all binding international agreements not just those concluded pursuant to Article II,

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

Clause 2 of the Constitution. The Court was persuaded to construe "treaty" in its international law sense because U.S. foreign policy is implicated, because Congress provided no clear expression of an intent to abrogate existing agreements and because post-enactment statements of various committees assume the validity of the agreements in urging the Department of Defense to renegotiate those agreements. The decision should be helpful in Collins v. Brown, presently pending in the district court which raises similar questions.

Attorney: William Kanter (Civil Division)
(FTS) 633-1597

Attorney: Freddi Lipstein (Civil Division)
(FTS) 633-4825

Wohlman v. United States, No. 80-2516, D.C. Circuit (March 26, 1982). D.J. #145-157-108.

DRAFT REGISTRATION: D.C. CIRCUIT REMANDS DRAFT REGISTRATION CASE FOR FURTHER PROCEEDINGS BEFORE DISTRICT COURT WITHOUT REVIEWING DISTRICT COURT'S PRIVACY ACT RULING.

Plaintiffs, a certified class of registration-aged males, sued under the Privacy Act to enjoin the Selective Service System from requiring registrants to disclose their social security account numbers. The district court (per Judge Gesell) agreed with plaintiffs that disclosure fell outside the Privacy Act's exception for disclosures expressly authorized by statute, and its exception for "grandfathered" uses (i.e., disclosures that were required by agency regulation in effect at the time the Privacy Act was enacted). The district court permanently enjoined continuing disclosures, and we obtained a stay of that order pending appeal.

Shortly after the case was argued on appeal, Congress expressly authorized Selective Service to obtain draft registrants' social security numbers in a special rider to the Defense Appropriations Act. On the basis of that legislation, we

filed a motion urging the court of appeals to dismiss the appeal as moot and vacate the judgment below. In opposition, plaintiffs contended that the Defense Authorization rider was ineffective until Selective Service promulgated new implementing regulations, and that the appeal should therefore go forward. We, in turn, disagreed that Congress intended Selective Service to promulgate new regulations. Alternatively, we urged that plaintiffs' argument in opposition to dismissal was founded on the APA and thus beyond the scope of the present suit, which only claimed that disclosure would violate restrictions against unauthorized dissemination of social security numbers posed by the Privacy Act. The D.C. Circuit has just dismissed the appeal from the Privacy Act ruling, and remanded the case to the district court for "further proceedings," presumably so plaintiffs can seek to amend their complaint and raise their APA claims de novo before the district court.

Attorney: Mark H. Gallant (Civil Division)
(FTS) 633-4052

New Jersey Air National and Department of Defense v. Federal Labor Relations Authority No. 81-1592 Third Circuit (April 12, 1982). D.J. #35-293.

FEDERAL LABOR RELATIONS: THIRD CIRCUIT SETS ASIDE DECISION OF THE FEDERAL LABOR RELATIONS AUTHORITY IN SUIT CONSTRUING THE NATIONAL GUARD TECHNICIAN ACT OF 1968 AND CIVIL SERVICE REFORM ACT OF 1978.

The FLRA held that there was a duty to bargain over union proposals of civilian technicians of the National Guard Bureau which would require the submission to binding arbitration of personnel grievances pertaining to "reduction-in-force," and "adverse disciplinary actions." We argued before the FLRA and in the court of appeals that the proposals are outside the National Guard's duty to bargain, because binding arbitration is prohibited by 32 U.S.C. 709(e), of the National Guard Technician Act, which expressly provides that "[n]otwithstanding any other provision of law," appeals of reduction-in-force, removals and adverse personnel actions "shall not extend beyond the adjutant

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

general" of the State. The court of appeals accepted our position totally and held that the specific provisions of section 709(e) of the Technician Act remain as exceptions to the terms of the Civil Service Reform Act. The court held that to hold the procedures as alternatives, as the FLRA suggested, would in effect repeal Section 709(e) of the Technician Act and would "permit a subtle subversion of a clear congressional intent."

This case is significant for three reasons. First, it is our first successful court challenge to a decision of the FLRA and should provide some help in challenging others. Second, the same issue is pending in another Third Circuit case as well as in the Seventh, Eighth and Ninth Circuits, and this decision should be of great assistance in those cases. Third, the decision firmly establishes that a proposal as drafted must be consistent with governing law before government managers can be required to enter into negotiations with respect to the proposal.

Attorney: Sandra Wein Simon (Civil Division)
(FTS) 633-3688

Anna Carlyle, etc. v. United States Department of the Army, No. 80-1068, Sixth Circuit (March 30, 1982). D.J. #157-37-673.

FTCA: SIXTH CIRCUIT ISSUES HELPFUL "DISCRETIONARY FUNCTION DECISION" IN FEDERAL TORT CLAIMS ACT CASE.

The Army made arrangements with a Detroit hotel for a group of young recruits to be lodged and fed on the eve of their induction. They were left unsupervised at the hotel but were given written instructions before their arrival that alcoholic beverages were forbidden in their rooms and advised that recruits who get a good night's rest do better on physical and mental exams than those who spend the night partying. This advice was ignored and the recruits indulged in horseplay which resulted in a bench being hurled from an upper story window. The bench struck and seriously injured the plaintiff who was standing below.

The district court granted summary judgment for the Army, holding that it had no duty to supervise the recruits at the hotel and was not negligent in failing to do so.

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

The court of appeals held that the complaint should have been dismissed as barred by the "discretionary function" exception to the FTCA, 28 U.S.C. 2680(a), reasoning that "whether or not to supervise at the hotel, and the extent of any such supervision, was a planning level, discretionary function not subject to operational level decision."

The decision should prove helpful in narrowing the reach of Downs v. United States, 522 F.2d 990 (1975), in which the Sixth Circuit held that the FBI's handling of a highjacking situation did not fall within the discretionary function exception despite the fact that it involved judgmental decisions.

Attorney: Eloise E. Davies (Civil Division)
(FTS) 633-3425

United States v. Cahall Brothers, No. 80-3550 Sixth Circuit (April 6, 1982). D.J. #136-58-560.

GOVERNMENT SECURITY INTERESTS: SIXTH CIRCUIT VACATES REFUSAL TO GIVE PRIORITY TO FARMERS HOME ADMINISTRATION'S SECURITY INTEREST.

The district court granted summary judgment for the seller on the ground that its purchase-money security interest in farm equipment had priority over what was held to be the general security interest of the Farmers Home Administration, which had loaned the funds used for the downpayment. But under UCC §9-107(B), a lender who "gives value" to finance a downpayment also has a purchase-money security interest. Because Farmers Home's interest had been recorded before the seller's, it would have priority, if it was a purchase-money security interest. The Sixth Circuit accepted our argument that "value" may have been given when Farmers Home co-signed a check drawn by the lender on a supervised checking account, thereby releasing the funds used for the downpayment. However, it remanded for further evidence to be taken on the question whether all of the "value" had actually been given some months earlier when Farmers Home agreed to make the loan.

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

Aside from the fact that we might win on remand, this case should prove useful in clarifying for Farmers Home and other money-lending agencies how to structure their loans so that they obtain purchase-money security interests when they are available under the UCC.

Attorney: Marc Richman (Civil Division)
(FTS) 633-5735

Calvin Morgan v. Office of Personnel Management and Merit Systems Protection Board No. 81-1961, Eighth Circuit (April 13, 1982).

PRECLUSION OF JUDICIAL REVIEW: EIGHTH CIRCUIT HOLDS THAT 5 U.S.C. 8347 PRECLUDES JUDICIAL REVIEW OF ADMINISTRATIVE DENIALS OF VOLUNTARY APPLICATIONS FOR DISABILITY RETIREMENT BENEFITS.

Petitioner sought judicial review of a final order of the Merit Systems Protection Board (MSPB) affirming the denial by the Office of Personnel Management (OPM) of his application for civil service disability retirement benefits. Petitioner filed a petition for review of the Board's decision in the court of appeals. In so doing, petitioner invoked 5 U.S.C. 7703(a)(1), enacted as part of the Civil Service Reform Act of 1978, which provides: "Any employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may obtain judicial review of the order or decision." We argued that judicial review of disability retirement cases is precluded by 5 U.S.C. 8347(c), which provides that in determining issues of disability and dependency, the decisions of OPM "are final and conclusive and are not subject to review." The Eighth Circuit agreed, holding that, as shown by the legislative history and purpose, 5 U.S.C. 8347(c) precludes judicial review of disability retirement decisions, except for those decisions involving agency-initiated involuntary applications based on the employee's mental condition. The court noted that although petitioner was "adversely affected" by the MSPB order, he was not subject to an adverse employment decision initiated by the agency, such as suspension, removal, or reduction in grade. The court expressly rejected the interpretation given to §8347(c) by the Court of Claims, which provided for a limited judicial review of retirement decisions. Finally, the

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

court relied on the legislative history of the 1980 amendments to §8347, which provided for judicial review under §7703 for agency-initiated involuntary disability retirement applications based on mental condition. The court agreed with us that "this amendment expressly providing for judicial review under §7703 would have been rendered if §8347(c) had already provided for judicial review under §7703." If Congress had wanted to provide 7703 judicial review for all disability cases, the court added, it could easily have done so.

Attorney: William Kanter (Civil Division)
(FTS) 633-1597

Attorney: Russell Caplan (Civil Division)
(FTS) 633-4331

Attorney: Murray Meeker (OPM Office of General Counsel)
(FTS) 254-6586

U.S. v. James L. Allen, et al., (M.D. Ga.) Civil No. 81-84-VAL. (11 March 1982). D.J. #101-19M-21.

FmHA LOAN PROGRAM: NON-JUDICIAL FORECLOSURE, ATTORNEY'S FEE.

The defendants held a first deed of trust on a large farm in Georgia, securing a loan on which the unpaid balance was $285,682.55 at the time the debtor defaulted on a payment. Farmers Home Administration held a second trust securing a loan with an unpaid balance of $1,876,567.75. FmHA has made it a condition of its loan that the holder of the first lien would agree to give ten days' notice to FmHA before foreclosing. Section 20-506 of the Georgia Code provides that the holder of a secured loan may recover an attorney's fee, not to exceed 15 percent, if payment in full of principal and interest is not made within ten days after demand. Within that time an official of FmHA wrote to the holders of the prior lien advising that a check to pay the full amount due had been ordered from the Finance Office of the Department of Agriculture, and he enclosed copies of vouchers ordering such check. The attorney for the holders of the first lien nevertheless claimed a fee of 15 percent, amounting to

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

$42,852.38, because actual payment was not received by his clients within the ten days. He proceeded with advertising a nonjudicial foreclosure, and the present action was brought by the United States Attorney to restrain that foreclosure. The parties stipulated that the money offered by FmHA would be paid to the defendants and the latter would execute an assignment to FmHA of the note and the deed of trust which they held. This left for the Court's decision only the question of attorney's fee. On March 11, 1982, District Judge Wilbur D. Owens, Jr. issued an opinion sustaining the position of the United States that the statute had been sufficiently satisfied by the letter from FmHA definitely commiting the Government to paying off the prior lien and promising to send a check as soon as one could be obtained. He also rested his decision upon the fact that the notice given by the holders of the prior lien was not in the form required by the statute and upon his view that the mere sending of a demand for payment and notice of intent to foreclose did not constitute the rendition of attorney services under the Georgia statute.

The attorney has appealed.

Attorney: Gregory J. Leonard (Assistant USA)
(FTS) 238-0454

Attorney: Robert Mandel (Civil Division)
(FTS) 724-7298

LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General Carol E. Dinkins

United States v. Osterlund, 671 F.2d 1267, No. 81-1231 (10th Cir., March 2, 1982) DJ 90-1-10-1525.

Jurisdiction; in Trespass case court cannot compel United States to accept damages and allow trespasser to remain on land.

After it was determined that Osterlund's cabin was situated within the boundaries of a national forest, the district court granted summary judgment against him and ordered him to refrain from trespassing on national forest land. The court granted the government's request requiring Osterlund to vacate the property and to remove all structures, improvements, and personal property within 180 days (505 F. Supp. 165).

On appeal, Osterlund asked the court of appeals to exercise its discretion by awarding damages to the government so that he could continue to retain possession of the land; in essence, he urged that he be permitted to buy the land on which the house was located from the government. The court of appeals affirmed the judgment against Osterlund, holding that it was powerless to award damages in lieu of enjoining his continued occupancy of the land. In so doing, the court relied on cases decided under the Property Clause of the Constitution, holding that the power over the public land is entrusted in Congress, not the courts.

Attorneys: Assistant United States Attorney
William C. Danks, D. Colo. FTS
327-2081.

United States v. Brown, ____ F.2d ____, No. 80-1448 (10th Cir., March 15, 1982) DJ 90-1-5-1541.

Mining claims occupancy Act; IBLA's determination that Brown was not a qualified applicant sustained.

The Tenth Circuit affirmed the district court's decision that the IBLA's determination that Scott Brown was not a qualified applicant under the Mining Claims Occupancy Act -- a discretionary relief statute for persons occupying unpatented mining claims in violation of the Surface Resources Act of 1955 -- was not arbitrary and capricious. It found that BLM was not equitably estopped to deny a document which Brown's predecessor-in-interest could not have relied on to his detriment because he did not know of its existence. The

court held that the doctrine of equitable title cannot apply to applications made under the MCOA because of the discretion the MCOA confers on the Secretary. Finally, it found the land description in the Secretary's complaint was adequate to support the government's quiet title action.

Attorneys: Robert D. Clark and Jacques B. Gelin (Land and Natural Resources Division) FTS 633-2855/2762

Creppel v. U.S. Army Corps of Engineers, ____ F.2d ____, No. 80-3743 (5th Cir., March 17, 1982) DJ 90-5-1-6-73.

Corps found to have authority to modify project.

The Corps modified the plans for a Small Flood Control Project to conform to the purposes and policies of the Clean Water Act. At the time of the modification, the Corps had spent the entire amount authorized for the project; completion, therefore, was to be financed and performed by the local government (Parish) which had previously granted assurances of local cooperation to the Corps. This suit was brought by owners of wetlands in the project area which would not be reclaimed under the modified project. They alleged that the Corps lacked authority to modify the project to eliminate the land reclamation benefits, that the Clean Water Act did not apply to the project which was begun prior to the enactment of the Act, and that the decision of the Corps to modify the project was arbitrary and capricious and denied them due process. The district court granted summary judgment to the Corps. On appeal, the Fifth Circuit held that the decision of the Corps was not arbitrary or capricious and that the Corps was authorized to modify the project. It also declined to review the cost-benefit ratio of the modified project. While noting that the Corps is not required to obtain local assurances as a condition to project modification, it found that there was not sufficient assurance that the local Parish could complete the project. While not deciding whether this was a "fatal defect," it reversed the grant of summary judgment and remanded to the district court for further proceedings.

Attorneys: Anne S. Almy and Robert L. Klarquist (Land and Natural Resources Division) FTS 633-4427/2731

United States v. 47.14 Acres of Land in Polk County, Iowa (Polich Enterprises, Inc.), ____ F.2d ____, No. 81-1627 (8th Cir., April 1, 1982) DJ 33-16-248-451.

Condemnation; award based on income capitalization approach, as opposed to comparable sales, reversed.

Landowner was awarded $442,000 by a commission for 32 acres condemned for the Saylorville Lake Project. The condemned property was part of a sand and gravel operation leased by Polich to a construction company. Landowner's witnesses utilized the income capitalization approach to value the property while government witnesses relied on comparable sales. The Eighth Circuit reversed the award as too high, offering the landowner the option of a remittitur of almost $170,000 or a new trial. The court expressed its preference for comparable sales to establish value, and stated that where the income capitalization method is used (when better evidence is not available) all of the factors that must be taken into account should be established by proper evidence "or such valuations can reach wonderland proportions." The court noted that, when a factfinder bases its finding on the opinion of an expert whose reasons are unsupported, the reviewing court should reject as clearly erroneous the findings based on such testimony. In ordering remittitur, the court utilized the income approach of the landowner's appraisers, but substituted more realistic production figures to arrive at a new award of $272,000.

Attorneys: Assistant United States Attorney Christopher Hager (Iowa); Claire L. McGuire and Jacques B. Gelin (Land and Natural Resources Division) FTS 633-2772/2762

Aminoil U.S.A., Inc. v. California State Water Resources Board and U.S. EPA, ____ F.2d ____, No. 80-5516 (9th Cir., April 2, 1982) DJ 90-5-1-1-1330.

Jurisdiction; sovereign immunity bars suit against EPA in State court.

Aminoil was discharging drilling wastes at a site which the State's Regional Water Board determined not to be "wetlands" requiring a state-issued NPDES permit pursuant to state law implementing Section 402 of the Clean Water Act, 33 U.S.C. 1342. While the Regional Board's determination was on appeal to the State Board, EPA sent Aminoil a "finding of violation" pursuant to 33 U.S.C. 1319 indicating the

agency's view that Aminoil's activity constituted unpermitted discharges into "wetlands" and that EPA would commence independent enforcement action if the State Board did not. The State Board held that a permit was required, after first coordinating its decision with EPA. Aminoil appealed the State Board decision in state court, and joined EPA as a defendant. EPA removed to federal district court, which found it had no derivative jurisdiction and dismissed EPA, holding that the agency may be sued only in federal court after it has taken some final administrative action.

The court of appeals affirmed, holding that the action was of the sort to which sovereign immunity applied, and that neither the 1976 Amendments to the APA, 5 U.S.C. 702, nor the Clean Water Act had waived immunity to suit in state courts. The court indicated concern that its affirmance may leave parties like Aminoil without an efficient means to resolve Clean Water Act issues against both federal and state enforcement agencies in a single judicial forum, but was nevertheless convinced that the joint federal-state scheme of the Act (giving EPA supervisory and independent enforcement authority) did not permit EPA's actions to be tested in state courts.

Attorneys: Martin W. Matzen and Anne S. Almy
(Land and Natural Resources Division)
FTS 633-2850/4427

VOL. 30 MAY 14, 1982 No. 9

OFFICE OF LEGISLATIVE AFFAIRS
Assistant Attorney General Robert A. McConnell

SELECTED CONGRESSIONAL AND LEGISLATIVE ACTIVITIES

APRIL 15, 1982 - APRIL 28, 1982

Agents Identities Protection. Conferees on the Intelligence Identities Protection Act, H.R. 4, have not yet held a formal meeting. However, extensive informal negotiations are taking place concerning conference report language on the controversial provision governing intentional disclosures of agents' identities by persons who may have never had authorized access to classified information.

Senate Judiciary Committee Executive Session. On April 21, the Senate Judiciary Committee ordered favorably reported S. 1030, revising certain provisions of the Gun Control Act. The McClure-Volkmer bill was approved by a 13 to 3 vote. The approved bill included a Kennedy amendment requiring handgun purchasers to wait 14 days to pick up their weapons. Such a waiting period was endorsed by the Attorney General's Task Force on Violent Crime.

Immigration. On April 20, the Subcommittee on Immigration, Refugees, and International Law of the House Judiciary Committee and the Subcommittee on Immigration and Refugee Policy of the Senate Judiciary Committee held a joint hearing on the Immigration Reform and Control Act. The members of the subcommittees were interested in the views of the Administration on those provisions of the bill that differed from the Omnibus Immigration Control Act. The Attorney General and Alan Nelson, Commissioner, Immigration and Naturalization Service, represented the Department of Justice.

Missing Children Resolution. Senator Hawkins has introduced on behalf of herself and 28 cosponsors, S.J. Res. 189, to authorize and request the President to designate May 25, 1982, as "Missing Children Day". The joint resolution has been referred to the Committee on the Judiciary.

Surplus Property. On April 21, Jeffrey Harris, Deputy Associate Attorney General, testified before the Subcommittee on Government Activities and Transportation of the House Government Operations Committee on H.R. 4450 and H.R. 6028. Both bills relate to the donation of federal surplus property to the states for correctional use.

S. 1593 - Maritime. S. 1593, a bill revising present law concerning the maritime industry contains several provisions divesting the Attorney General of litigating authority. The Department is conveying the Administration's position opposing these provisions to the Senate Commerce Committee.

VOL. 30 May 14, 1982 NO. 9

Federal Rules of Criminal Procedure

Rule 35. Correction or Reduction of Sentence.

Defendant, convicted of cocaine violations, made a timely Rule 35 motion for reduction of sentence, which was granted. Within 120 days after this reduction of sentence, but more than 120 days after the original imposition of sentence, the defendant filed a second motion for reduction of sentence. The district court held that this motion was untimely, and defendant appealed.

The Court noted that the question of whether the reduction of a sentence is included in the term "imposition of sentence" in Rule 35 had not been addressed by the former Fifth Circuit or the Eleventh Circuit, and that there was scant case authority to assist in deciding the point. After reviewing what case law there was, the Court held that a reduction of sentence is not equivalent to imposition of a sentence because: (1) Rule 35 prescribes strict limits on a court's jurisdiction to exercise discretion in sentencing; (2) reduction of sentence involves reconsideration of a sentence previously imposed for such reasons as may be asserted in the motion; (3) all the reasons for reduction should be asserted in the first motion; and (4) a motion to reduce a previously reduced sentence is nothing more than an attempt to have the court reconsider the previous motion for reasons already asserted. Since the 120 day period for reduction of sentence under Rule 35 runs from the date of the original sentence (or the other events specified in Rule 35), and does not start over again when the original sentence is reduced pursuant to a prior motion, the district court was correct in holding the second motion in this case to be untimely.

(Affirmed.)

United States v. Robert Joseph Llinas, 670 F.2d 993 (11th Cir. 1982)

VOL. 30 May 14, 1982 NO. 9

Federal Rules of Criminal Procedure

Rule 11. Pleas.

Rule 11(f). Pleas. Determining Accuracy of Plea.

Defendants pled guilty to wilful failure to file reports required when bringing over $5,000 into the United States and were adjudged guilty. Subsequently, the Government filed a forfeiture action based on the same transactions as the criminal case. Applying the doctrine of collateral estoppel, the court granted summary judgment, ruling that the criminal convictions established the forfeitability of the money. Defendants appealed, arguing that the taking of their guilty pleas did not comply with Rule 11(f) and, therefore, the pleas could not be used to work a collateral estoppel.

The Court stated that the avenues for contesting pleas are the original criminal proceeding, a direct appeal, and a 28 U.S.C. 2255 collateral attack on the conviction, of which the defendants did not avail themselves, and that the policy behind Rule 11 is to ensure the voluntariness of guilty pleas so that innocent persons are not convicted of crimes. The Court held that the general rule of collateral estoppel should be followed regardless of whether the requirements of Rule 11 were met, since a defendant who bypasses opportunities to raise a claim in one forum should not be able to raise it in a collateral forum without a showing of special circumstances. The Court further stated that the protection of Rule 11 was designed for criminal cases and such a forfeiture proceeding should be treated as civil, rather than criminal or quasi-criminal, and concluded that defendants were collaterally estopped from litigating the matters disposed of in the criminal case by their guilty pleas.

(Affirmed.)

United States v. $31,697.59 Cash, 665 F.2d 903 (9th Cir., January 11, 1982).

VOL. 30 MAY 14, 1982 NO. 9

Federal Rules of Criminal Procedure

Rule 24(b). Trial Jurors. Peremptory Challenges.

Defendant appealed from his bank robbery conviction, arguing that the jury selection procedures unduly restricted his exercise of his tenth peremptory challenge under Rule 24(b). The judge, using the "jury box" system, selected 12 members of the array to enter the jury box and prescribed a pattern of alternating challenges to be exercised by counsel for each side against those seated in the jury box and those drawn to replace any of the first 12 who had been challenged; those remaining after both sides used their challenges became the petit jury. The exercise of peremptory challenges was divided into five rounds and replacements for those jurors challenged during a round were selected at the completion of the round. Defendant argues that a replacement should have been drawn after his ninth challenge, as he had requested, before he was required to exercise his last challenge, so that the number of jurors eventually empanelled whom he had not seen would have been one instead of two.

Noting that Rule 24(b) does not prescribe a particular method for use of peremptory challenges, the Court held that the procedure used allowed defendant a reasonable opportunity to challenge replacements and was well within the allowable discretion of the district court. The Court stated that defendant could not succeed in his claim by showing that he could have made more effective use of his peremptories under another procedure, since if that were so, the "struck jury" system which permits an initially selected group of 28 candidates to be narrowed down to 12 survivors and allows a more effective opportunity for the use of peremptories would be required by Rule 24(b).

(Affirmed)

United States v. Jacques Blouin, ___ F.2d ___, No. 81-1029 (2d Cir. December 23, 1981).

VOL. 30 MAY 14, 1982 NO. 9

Federal Rules of Evidence

Rule 412. Rape Cases; Relevance of Victim's Past Behavior.

Pursuant to Rule 412, the defendant in a rape case made a pre-trial motion to admit evidence and permit cross-examination concerning the victim's past sexual behavior. After a hearing, the district court concluded that the defendant could introduce the proffered evidence, and the rape victim appealed this ruling. The defendant asserted that the court of appeals lacked jurisdiction to entertain a victim's appeal from the district court's order in the Rule 412 proceeding.

The court began with an examination of the text, purpose, and legislative history of Rule 412, and concluded that these factors clearly indicated that Congress enacted the rule for the special benefit of rape victims. While the rule makes no reference to the right of a victim to appeal an adverse ruling, the court held that such a remedy is implicit as a necessary corollary of the rule's explicit protection of the privacy interests Congress sought to safeguard, since failing to allow appeals by such victims would frustrate the Congressional intent embodied in the rule. Noting that without the right to immediate appeal rape victims would have no opportunity to protect their privacy, and that the inconvenience and costs associated with permitting a victim to appeal are minimal, the court concluded that the district court's order met the test of practical finality, and that it thus had jurisdiction to hear the appeal. Turning to the merits, the court reviewed the specific evidence proffered under the standards set forth in the rule, and found that certain evidence should not have been found to be admissible and that certain other evidence was properly found to be admissible under the rule.

(Affirmed in part, reversed in part, and remanded.)

F. Doe v. United States, et al., 666 F.2d 43 (4th Cir. December 3, 1981)

U.S. ATTORNEY'S LIST AS OF May 14, 1982

UNITED STATES ATTORNEYS

DISTRICT	U.S. ATTORNEY
Alabama, N	Frank W. Donaldson
Alabama, M	John C. Bell
Alabama, S	J. B. Sessions, III
Alaska	Michael R. Spaan
Arizona	A. Melvin McDonald
Arkansas, E	George W. Proctor
Arkansas, W	W. Asa Hutchinson
California, N	Joseph P. Russoniello
California, E	Donald B. Ayer
California, C	Stephen S. Trott
California, S	Peter K. Nunez
Colorado	Robert N. Miller
Connecticut	Alan H. Nevas
Delaware	Joseph J. Farnan, Jr.
District of Columbia	Stanley S. Harris
Florida, N	Nickolas P. Geeker
Florida, M	Robert W. Merkle, Jr.
Florida, S	Stanley Marcus
Georgia, N	James E. Baker
Georgia, M	Joe D. Whitley
Georgia, S	Hinton R. Pierce
Guam	David T. Wood
Hawaii	Daniel Bent
Idaho	Guy G. Hurlbutt
Illinois, N	Dan K. Webb
Illinois, S	Frederick J. Hess
Illinois, C	Gerald D. Fines
Indiana, N	R. Lawrence Steele, Jr.
Indiana, S	Sarah Evans Barker
Iowa, N	Evan L. Hultman
Iowa, S	Richard C. Turner
Kansas	Jim J. Marquez
Kentucky, E	Louis G. DeFalaise
Kentucky, W	Ronald E. Meredith
Louisiana, E	John Volz
Louisiana, M	Stanford O. Bardwell, Jr.
Louisiana, W	Joseph S. Cage
Maine	Richard S. Cohen
Maryland	J. Fredrick Motz
Massachusetts	William F. Weld
Michigan, E	Leonard R. Gilman
Michigan, W	John A. Smietanka
Minnesota	James M. Rosenbaum
Mississippi, N	Glen H. Davidson
Mississippi, S	George L. Phillips
Missouri, E	Thomas E. Dittmeier
Missouri, W	Robert G. Ulrich

UNITED STATES ATTORNEYS

DISTRICT	U.S. ATTORNEY
Montana	Byron H. Dunbar
Nebraska	Ronald D. Lahners
Nevada	Lamond R. Mills
New Hampshire	W. Stephen Thayer, III
New Jersey	W. Hunt Dumont
New Mexico	William L. Lutz
New York, N	George H. Lowe
New York, S	John S. Martin, Jr.
New York, E	Edward R. Korman
New York, W	Salvatore R. Martoche
North Carolina, E	Samuel T. Currin
North Carolina, M	Kenneth W. McAllister
North Carolina, W	Charles R. Brewer
North Dakota	Rodney S. Webb
Ohio, N	J. William Petro
Ohio, S	Christopher K. Barnes
Oklahoma, N	Francis A. Keating, II
Oklahoma, E	Betty O. Williams
Oklahoma, W	William S. Price
Oregon	Charles H. Turner
Pennsylvania, E	Peter F. Vaira, Jr.
Pennsylvania, M	David D. Queen
Pennsylvania, W	J. Alan Johnson
Puerto Rico	Raymond L. Acosta
Rhode Island	Lincoln C. Almond
South Carolina	Henry Dargan McMaster
South Dakota	Philip N. Hogen
Tennessee, E	John W. Gill, Jr.
Tennessee, M	Joe B. Brown
Tennessee, W	W. Hickman Ewing, Jr.
Texas, N	James A. Rolfe
Texas, S	Daniel K. Hedges
Texas, E	Robert J. Wortham
Texas, W	Edward C. Prado
Utah	Brent D. Ward
Vermont	George W.F. Cook
Virgin Islands	Ishmael A. Meyers
Virginia, E	Elsie L. Munsell
Virginia, W	John P. Alderman
Washington, E	John E. Lamp
Washington, W	Gene S. Anderson
West Virginia, N	William A. Kolibash
West Virginia, S	David A. Faber
Wisconsin, E	Joseph P. Stadtmueller
Wisconsin, W	John R. Byrnes
Wyoming	Richard A. Stacy
North Mariana Islands	David T. Wood